

The fact that all the customers of a reseller of fuel hold certificates of public convenience does not allow a receiver of fuel to sell fuel free of the environmental impact fee to the reseller under Section 310 of the Environmental Impact Fee Law. (This is a PLR).

November 19, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of October 19, 2001 including the memo to the Department's Motor Fuel Tax Division and the follow up information received in the Department's Legal Services Office on November 5, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to NAME for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither NAME nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter of October 19, 2001, you have stated and made inquiry as follows:

Please find and accept the two attached requests for a Private Letter Rulings. They are in regard to the \$.003 per USG tax imposed by Illinois Reg. Section 500.202(a) and the exemption for that tax provided by Illinois Reg. Section 500.202(c) and the \$.008 per USG Environmental Impact Fee imposed by Article 3 of the Environmental Impact Fee Law (415 ILCS 125/310) and the exemption for that fee provided by the same statute.

Any correspondence regarding these requests can be mailed or faxed to:

...

If you have any questions or need additional information, please don't hesitate to contact me. Thank you for your consideration.

In your memorandum of October 13, 2001, you have stated and made inquiry as follows:

This is a request for a Private Letter Ruling regarding the \$.008 per USG Environmental Impact Fee imposed by Article 3 of the Environmental Impact Fee Law (415 ILCS 125/310) and the exemption for that fee provided by the same statute.

FACTS:

Chapter 415 ILCS 125/310, imposes a tax of \$.008 per USG fee on receivers of fuel in Illinois. BBB is a licensed Receiver, as defined by Title 86, Reg. §501.100 of the Illinois Department of Revenue ('IL DOR') Regulations. BBB sells fuel to NAME at PLACES.

NAME is a STATE Corporation licensed for purposes of the Illinois Prepaid Sales Tax on motor fuel. NAME has no physical contact with Illinois. Their activity in Illinois consists of receiving an order for jet fuel, via telephone, from a customer in Illinois and immediately purchasing and reselling the fuel to the customer. NAME acts as a fuel broker between BBB, the supplier, and the end user. NAME is not a producer or refiner of fuels and does not import or export fuel. NAME does not operate an Illinois bulk plant and does not have active bulk storage capacity of 30,000 gallons or more. Although NAME bills the customer for the sale, it does not take possession of the fuel or bear any risk of loss related to the fuel. The billing process is merely an administrative convenience NAME offers to its customers. NAME's customers are composed solely of Certified Air Carriers ('holders of Certificates of Public Convenience').

NAME maintains that fuel sold by BBB to NAME is exempt from Environmental Impact Fee under Chapter 415 ILCS 125/310. All cites and references are to Regulations prescribed by the Illinois Department of Revenue and the Illinois Environmental Impact Fee Law, unless otherwise noted.

ISSUE:

Liability:

In the event the tax should be imposed on the transaction in question, what party is liable for the tax imposed by Chapter 415 ILCS 125/310?

Exemption:

Does fuel sold by BBB to NAME qualify for the exemption under Chapter 415 ILCS 125/310?

SHORT ANSWER:

Liability:

BBB is liable for the tax imposed by Chapter 415 ILCS 125/310.

Exemption:

Fuel sold to NAME's customers by BBB qualifies for the exemption provided in Chapter 415 ILCS 125/310 because the fee is not imposed on the receipt or importation of fuel at PLACES, which is sold to or used by holders of Certificates of Public Convenience (Certified Air Carriers). Because fuel sold by BBB to NAME's customers, is only sold to or used by holders of Certificates of Public Convenience, the tax is not imposed on the fuel received by BBB at PLACES.

LAW:

Article 3, Chapter 415 ILCS 125/310 sets forth the basis and rate of the Environmental Impact Fee:

"Beginning January 1, 1996, all receivers of fuel are subject to an environmental impact fee of \$60 per 7,500 gallons of fuel, or an equivalent amount per fraction thereof, that is sold or used in Illinois. The fee shall be paid by the receiver in this State who first sells or uses the fuel.

A receiver of fuels is subject to the fee without regard to whether the fuel is intended to be used for operation of motor vehicles on the public highways and waters. However, the fee shall be imposed upon the importation or receipt of aviation fuels and kerosene at airports with over 170,000 operations per year, located in a city of more than 1,000,000 inhabitants, for sale to or use by holders of Certificates of Public Convenience and Necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above...."

Liability:

The first paragraph of Chapter 415 ILCS 125/310 states, '[T]he fee shall be paid by the receiver in this State who first sells or uses fuel'. Therefore, when the fee is applicable, it is the liability of the 'first' party who imports or receives the fuel, to pay the fee.

Exemption:

PLACEs are the only PLACEs which currently fit the requirements of, Paragraph two of Chapter 415 ILCS 125/310 states that, '[N]o such tax shall be imposed upon the importation or receipt of aviation fuels and kerosene...' at PLACEs '[F]or sale to or use by holders of Certificates of Public Convenience and Necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates...'. This paragraph clearly states that no tax is imposed on receipt or importation of fuel which is sold to or used by holders of Certificates of Public Convenience and Necessity, or their air carrier affiliates. Therefore, if the fuel is sold to or used by holders of Certificates of Public Convenience and Necessity, the Environmental Impact Fee is never imposed on the fuel when it is received or imported. There is no way to assess or collect the fee if the fee has never been imposed on the fuel.

ANALYSIS:

Liability:

NAME does not import or receive fuel in Illinois. NAME's suppliers, BBB, are the importers and receivers of fuel in the state and are therefore liable for the fee in question (Reg. §500.202(b)).

Exemption:

In order for the exemption from the \$.008 per USG fee to apply, two requirements of the second paragraph of Chapter 415 ILCS 125/310 must be fulfilled in the current fact pattern. First, the fuel has to be received or imported into the State of Illinois at PLACES. Second, the fuel must be sold to or used by holders of Certificates of Public Convenience. NAME's customer base is composed solely of certified air carriers (holders of Certificates of Public Convenience). Because the fuel NAME brokers and invoices is only sold to or used by holders of Certificates of Public Convenience and the fuel is received in Illinois by NAME's suppliers, the two requirements of the exemption are fulfilled and no \$.008 per USG fee is imposed on any fuel received for NAME by its suppliers. Therefore, neither BBB nor NAME is subject to the \$.008 per USG fee.

POLICY CONCERN:

The exemption set forth under the second paragraph of Chapter 415 ILCS 125/310 is provided to encourage licensed commercial aviation in PLACES. This is apparent in the language, '[F]or sale to or use by holders of Certificates of Public Convenience and Necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an PLACE described above....'. After the September 11, 2001 events of the World Trade Center tragedy, the purpose of this statute has never been more important. To impose the Environmental Impact Fee simply because a reseller of fuel, whose entire client base is composed of holders of Certificates of Public Convenience, enters into the transaction, is to completely undermine the purpose of the exemption. In the interest of promoting commercial aviation and aiding the airline industry in its recovery from the World Trade Center tragedy, the original intent of the statute should be of paramount concern.

The fee to which you are referring, commonly known as the Environmental Impact Fee, is set forth at 415 ILCS 125/310. Section 125/310 provides that "[b]eginning January 1, 1996, all receivers of fuel are subject to an environmental impact fee of \$60 per 7,500 gallons of fuel, or an equivalent amount per fraction thereof, that is sold or used in Illinois. The fee shall be paid by the receiver in this State who first sells or uses the fuel." Section 310 also provides that "no fee shall be imposed upon the importation or receipt of aviation fuels and kerosene at PLACES with over 170,000 operations per year, located in a city of more than 1,000,000 inhabitants, for sale to or use by holders of certificates of public convenience and necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an PLACE described above." In addition, Section 310 provides that "no fee may be imposed when the sale is made...to a person holding a valid license as a receiver."

You have asked whether sales of fuel made by BBB to NAME can qualify for exemption from the fee. You have indicated that NAME is not licensed as a receiver. Therefore, BBB may not sell fuel to NAME fee-free on that basis. You have also not indicated that NAME is the holder of a certificate of public convenience and necessity or foreign air carrier permit, issued by the United States Department of Transportation, or an air carrier affiliate of such a certificate or permit holder. Therefore, we are unable to advise that R's sales to NAME can qualify for fee-free treatment on that basis. This is because the statute provides that it is the first sale or use of fuel upon which the fee is based. You have stated that NAME purchases the fuel from BBB and resells it to its customers.

Therefore NAME acts not as a broker, but as a reseller of fuel. The fact that NAME's customers hold certificates of public convenience does not allow BBB to sell fuel fee-free to NAME.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk